

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Barbara Yohnka,)
)
Plaintiff,)
v.)
)
SYNTHES USA SALES, LLC, and)
SYNTHES, INC. aka SYNTHES USA)
Foreign corporations,)
Defendants.)

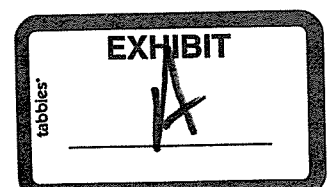
Case No.: 2010LOG3147
CALENDAR/ROOM F
TIME 00:00
Product Liability

COMPLAINT AT LAW

NOW COMES, Plaintiff, Barbara Yohnka, by and through her attorney, Stephen Masters, and complaining of the defendant SYNTHES USA SALES, LLC and SYNTHES, INC aka SYNTHES USA foreign corporations, says:

COUNT I

1. That during and before March 11, 2008 the defendant, SYNTHES USA SALES, LLC a foreign corporation was engaged in the business of designing, manufacturing, distributing, and selling certain medical devices and did design, manufacture, distribute, and sell a certain medical device called a Titanium 3.5 Oblique T-plate with screws, the purpose of which was to repair and attach broken bones together.
2. That during and before March 11, 2008 the defendant SYNTHES USA SALES, LLC a foreign corporation, had a duty to design manufacture, distribute and sell said aforementioned T-plates with screws that were safe and would not cause harm to foreseeable users including the plaintiff.
3. That during and before March 11, 2008 the defendant SYNTHES USA SALES, LLC a foreign corporation, had a duty to provide instructions concerning the proper use of the T-plates with screws and to provide warnings of the dangers associated with using said product.
4. That during and before March 11, 2008 the defendant SYNTHES USA SALES, LLC a foreign corporation supplied and delivered a Titanium 3.5 Oblique T-plate with screws to Alexian Brothers Hospital in Elk Grove Village, Illinois.



5. That during and before March 11, 2008 the plaintiff BARBARA YOHNKA, was under the care and treatment of a licensed physician and surgeon engaged in the practice of her profession for a fracture to her left arm
6. That as part of the aforesaid care and treatment, said physician surgically implanted into the plaintiff's left arm the aforementioned T-plate with screws designed manufactured distributed and sold by the defendant SYNTHES USA SALES, LLC a foreign corporation.
7. The package and its contents delivered to Alexian Brothers Hospital in Elk Grove Village, Illinois that contained the T-plate and screws implanted in Plaintiff's arm as aforementioned arrived at the hospital in an undamaged condition and said T-plate and screws were in the same condition when surgically placed in her arm on March 11, 2008
8. That during and before March 11, 2008 the defendant SYNTHES USA SALES, LLC a foreign corporation by and through it's duly authorized agents and employees did or failed to do one or more of the following acts so that said T-plate and screws could not perform their proper function thereby proximately causing severe injury to the plaintiff, said acts being:
 - a. Negligently and carelessly failed to warn of the effect of the weakened condition eventually causing breakage of the plate and screws after same were implanted in Plaintiff's left arm.
 - b. Negligently and carelessly designed said plate and screws by failing to provide said plate and screws with molybdenum when a titanium-molybdenum alloy would strengthen the plate and screws to further prevent breakage.
 - c. Further negligently and carelessly failed to further strengthen the weakened plate by using grade 2 titanium and other materials that were more effective and proper strengthening substances.
 - d. Negligently and carelessly failed to provide plaintiff's hospital and surgeon and any other technicians assisting with appropriate directions necessary to properly surgically install the aforementioned T-plate and screws in the injured arm of the plaintiff, so it would not break.
9. That as a direct and proximate result of the aforesaid negligent acts and/or failure to act on the part of Defendant herein the T-plate and screws described above broke after being properly surgically implanted in Plaintiff's left arm causing Plaintiff to suffer sever injury and permanent damage to said arm requiring extensive medical care to treat said injuries and further causing Plaintiff to experience continued extensive pain and suffering, additionally Plaintiff having

incurred thereby extensive medical bills and additional surgery and medical care all due to the foregoing fault described above and attributed to this defendant.

WHEREFORE, the plaintiff, Barbara Yohnka, prays judgment against the defendant, SYNTHES USA SALES, LLC a foreign corporation in an amount in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

COUNT II
(Strict Liability)

- 1 – 7 The plaintiff, BARBARA YOHNKA, hereby adopts, reasserts, and realleges the allegations contained in Paragraphs 1 – 7 of Count I of her complaint as and for Paragraphs 1 – 7 of this count.
8. That during and before March 11, 2008, the T-Plate and screws as described in Count I herein as manufactured, distributed, and sold were in an unreasonably dangerous condition in that said products were unreasonably subject to breakage and unsafe and specifically that the defendant SYNTHES USA SALES, LLC a foreign corporation.
- a. Failed to warn of the defective condition of the T-plate and screws as aforementioned.
 - b. Failed to properly design and construct the T-plate and screws with the most appropriate and safe metals and materials to guard against breakage.
 - c. Failed to engage in proper testing to most effectively guard against breakage of the T-plate and screws aforementioned.
9. That one or more of these defects existed when the T-plate and screws aforementioned left the defendant's control making said T-plate and screws unreasonably dangerous because the T-plate and/or screws failed to perform in the manner reasonably to be expected in light of the T-plate and screws nature and intended function and/or because the dangers outweigh the utility providing a safer product as described above
10. That as a direct and proximate result of the aforesaid unreasonably dangerous condition of the T-plate and screws aforementioned, the plaintiff, BARBARA YOHNKA, was injured and sustained permanent damage.

WHEREFORE, the Plaintiff BARBARA YOHNKA, asks judgment of the defendant, SYNTHES USA SALES, LLC a corporation in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

COUNT III
(Implied Warranties under the Uniform Commercial Code)
Illinois Statute 810 ILCS 5/2-315 Implied Warranty

- 1 – 7 The plaintiff, BARBARA YOHNKA, hereby adopts, reasserts, and realleges the allegations contained in Paragraphs 1 – 7 of Count I of her complaint as and for Paragraphs 1 – 7 of this count.
8. That during and before March 11, 2008 the defendant SYNTHES USA SALES, LLC a corporation, did impliedly warrant that the titanium 3.5 Oblique T-plate with screws was of merchantable quality pursuant to the applicable provisions of the uniform commercial code and prevailing Illinois statutes
9. That at the aforesaid time, the defendant SYNTHES USA SALES, LLC a corporation, did breach the aforesaid implied warranty in that the aforementioned T-plate and screws were not of merchantable quality.
10. That as a direct and proximate result of the aforesaid breach of implied warranty, the plaintiff, BARBARA YOHNKA, was injured and sustained damage
11. Written notice that this complaint of this lawsuit would be filed was sent to the registered agent of defendant, SYNTHES USA SALES, LLC, a corporation and stated that said defendant knew or should have known about the Breach of Implied Warranty of Fitness of Purpose for the T-plate and screws at the time said products left the defendants possession herein prior to the filing of suit on March 10, 2010 attached hereto as Exhibit "B"

WHEREFORE, the Plaintiff BARBARA YOHNKA, asks judgment of the defendant, SYNTHES USA SALES, LLC a corporation in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

COUNT IV

1. That during and before March 11, 2008 the defendant, SYNTHES, INC aka SYNTHES USA, a foreign corporation was engaged in the business of designing, manufacturing, distributing, and selling certain medical devices and did design, manufacture, distribute, and sell a certain medical device called a Titanium 3.5 Oblique T-plate with screws, the purpose of which was to repair and attach broken bones together.
2. That during and before March 11, 2008 the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation, had a duty to design manufacture, distribute and sell said aforementioned T-plates with screws that were safe and would not cause harm to foreseeable users including the plaintiff.
3. That during and before March 11, 2008 the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation, had a duty to provide instructions concerning the proper use of the T-plates with screws and to provide warnings of the dangers associated with using said product.
4. That during and before March 11, 2008 the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation supplied and delivered a Titanium 3.5 Oblique T-plate with screws to Alexian Brothers Hospital in Elk Grove Village, Illinois.
5. That during and before March 11, 2008 the plaintiff BARBARA YOHNKA, was under the care and treatment of a licensed physician and surgeon engaged in the practice of her profession for a fracture to her left arm
6. That as part of the aforesaid care and treatment, said physician surgically implanted into the plaintiff's left arm the aforementioned T-plate with screws designed manufactured distributed and sold by the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation.
7. The package and its contents delivered to Alexian Brothers Hospital in Elk Grove Village, Illinois that contained the T-plate and screws implanted in Plaintiff's arm as aforementioned arrived at the hospital in an undamaged condition and said T-plate and screws were in the same condition when surgically placed in her arm on March 11, 2008
8. That during and before March 11, 2008 the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation by and through it's duly authorized agents and employees did or failed to do one or more of the following acts so that said T-plate and screws could not perform their proper function thereby proximately causing severe injury to the plaintiff, said acts being:
 - a. Negligently and carelessly failed to warn of the effect of the weakened condition eventually causing breakage of the plate and screws after same were implanted in Plaintiff's left arm.

- b. Negligently and carelessly designed said plate and screws by failing to provide said plate and screws with molybdenum when a titanium-molybdenum alloy would strengthen the plate and screws to further prevent breakage.
 - c. Further negligently and carelessly failed to further strengthen the weakened plate by using grade 2 titanium and other materials that were more effective and proper strengthening substances.
 - d. Negligently and carelessly failed to provide plaintiff's hospital and surgeon and any other technicians assisting with appropriate directions necessary to properly surgically install the aforementioned T-plate and screws in the injured arm of the plaintiff, so it would not break.
9. That as a direct and proximate result of the aforesaid negligent acts and/or failure to act on the part of Defendant herein the T-plate and screws described above broke after being properly surgically implanted in Plaintiff's left arm causing Plaintiff to suffer sever injury and permanent damage to said arm requiring extensive medical care to treat said injuries and further causing Plaintiff to experience continued extensive pain and suffering, additionally Plaintiff having incurred thereby extensive medical bills and additional surgery and medical care all due to the foregoing fault described above and attributed to this defendant.

WHEREFORE, the plaintiff, Barbara Yohnka, prays judgment against the defendant, SYNTHES, INC aka SYNTHES USA, a foreign corporation in an amount in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

COUNT V
(Strict Liability)

- 1 – 7 The plaintiff, BARBARA YOHNKA, hereby adopts, reasserts, and realleges the allegations contained in Paragraphs 1 – 7 of Count IV of her complaint as and for Paragraphs 1 – 7 of this count.
8. That during and before March 11, 2008, the T-Plate and screws as described in Count I herein as manufactured, distributed, and sold were in an unreasonably dangerous condition in that said products were unreasonably subject to breakage and unsafe and specifically that the defendant SYNTHES, INC aka SYNTHES USA, a foreign corporation.

- a. Failed to warn of the defective condition of the T-plate and screws as aforementioned.
 - b. Failed to properly design and construct the T-plate and screws with the most appropriate and safe metals and materials to guard against breakage.
 - c. Failed to engage in proper testing to most effectively guard against breakage of the T-plate and screws aforementioned.
9. That one or more of these defects existed when the T-plate and screws aforementioned left the defendant's control making said T-plate and screws unreasonably dangerous because the T-plate and/or screws failed to perform in the manner reasonably to be expected in light of the T-plate and screws nature and intended function and/or because the dangers outweigh the utility providing a safer product as described above
 10. That as a direct and proximate result of the aforesaid unreasonably dangerous condition of the T-plate and screws aforementioned, the plaintiff, BARBARA YOHNKA, was injured and sustained permanent damage.

WHEREFORE, the Plaintiff BARBARA YOHNKA, asks judgment of the defendant, SYNTHES, INC aka SYNTHES USA, a corporation in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

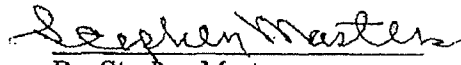
COUNT VI
(Implied Warranties under the Uniform Commercial Code)
Illinois Statute 810 ILCS 5/2-315 Implied Warranty

- 1 – 7 The plaintiff, BARBARA YOHNKA, hereby adopts, reasserts, and realleges the allegations contained in Paragraphs 1 – 7 of Count IV of her complaint as and for Paragraphs 1 – 7 of this count.
8. That during and before March 11, 2008 the defendant SYNTHES, INC aka SYNTHES USA, a corporation, did impliedly warrant that the titanium 3.5 Oblique T-plate with screws was of merchantable quality pursuant to the applicable provisions of the uniform commercial code and prevailing Illinois statutes
9. That at the aforesaid time, the defendant SYNTHES, INC aka SYNTHES USA, a corporation, did breach the aforesaid implied warranty in that the aforementioned T-plate and screws were not of merchantable quality.

10. That as a direct and proximate result of the aforesaid breach of implied warranty, the plaintiff, BARBARA YOHNKA, was injured and sustained damage
11. Written notice that this complaint of this lawsuit would be filed was sent to the registered agent of defendant, SYNTHES, INC aka SYNTHES USA, a corporation and stated that said defendant knew or should have known about the Breach of Implied Warranty of Fitness of Purpose for the T-plate and screws at the time said products left the defendants possession herein prior to the filing of suit on March 10, 2010 attached hereto as Exhibit "B"

WHEREFORE, the Plaintiff BARBARA YOHNKA, asks judgment of the defendant, SYNTHES, INC aka SYNTHES USA, a corporation in excess of \$50,000.00. Affidavit of Damages marked as Exhibit "A" regarding same is attached hereto.

Respectfully submitted,
BARBARA YOHNKA


By: Stephen Masters

Stephen M. Masters, Esq.
Stephen Masters & Associates
58 North Chicago Street, Suite 405
Joliet, IL 60423
Phone: (815) 726-4777
Fax: (815) 726-0273
Atty No: 7081

STATE OF ILLINOIS)
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COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Barbara Yohnka,)
)
Plaintiff,)
v.)
)
SYNTHES USA SALES, LLC, and) Case No.: _____
)
SYNTHES, INC. aka SYNTHES USA)
)
Foreign corporations,)
)
Defendants.)

AFFIDAVIT OF DAMAGES

STEPHEN M. MASTERS certify under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, as follows:

1. BARBARA YOHNKA is the Plaintiff in this case: Barbara Yohnka v. SYNTHES USA SALES, LLC and SYNTHES, INC aka SYNTHES USA foreign corporations
2. STEPHEN M. MASTERS is the Plaintiff's attorney in this case: Barbara Yohnka v. SYNTHES USA SALES, LLC and SYNTHES, INC aka SYNTHES USA foreign corporations
3. The Affiant hereby stipulate that the total damages being sought, and the amount in controversy in the claim being made against SYNTHES USA SALES, LLC and SYNTHES, INC aka SYNTHES USA foreign corporations named in Paragraph 1, exclusive of interest and costs, is in excess of Fifty Thousand Dollars (\$50,000.00).

Respectfully submitted,
BARBARA YOHNKA


By: STEPHEN M. MASTERS

Exhibit "A"

Stephen Masters & Associates
58 North Chicago Street, Suite 405
Joliet, IL 60423
Phone: 815/726-4777
Fax: 815/726-0273
Cook County Atty No: 70817

STATE OF ILLINOIS)
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COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Barbara Yohnka,

Plaintiff,

v.

SYNTHES USA SALES, LLC, and
SYNTHES, INC. aka SYNTHES USA
Foreign corporations,

Defendants.

Case No.: _____

NOTICE OF FUTURE FILING

TO: Synthes USA Sales LLC and
SYNTHES INC. aka SYNTHES USA Foreign Corporations
c/o their Registered Illinois Agent:
CT Corporation System
208 S. LaSalle St (Suite 814)
Chicago, IL 60604

THIS IS LEGAL NOTICE to all future defendants herein, namely Synthes USA Sales LLC and also SYNTHES INC. aka SYNTHES USA all of which are foreign corporations, said legal notice given to said future defendants through their legal registered Illinois agent CT Corporation System, 208 S. LaSalle St (#814) Chicago, IL 60604 that a lawsuit will be filed against all said defendants on the 11th day of March, 2010 filed by BARBARA YOHNKA, plaintiff v. Synthes USA Sales LLC and SYNTHES INC. aka SYNTHES USA foreign corporations, all as defendants in said lawsuit, alleging in said lawsuit's complaint against said future defendants Counts for Breach of Implied Warrant of Fitness of Purpose regarding the manufacture, materials used, and design of the T-plate and screws sold to Alexian Brothers Hospital in Elk Grove Village, Illinois, surgically implanted on or about August 3, 2007 in Plaintiff's left arm and surgically removed on March 11, 2008 and that at the time said T-plate and screws referred to in said Complaint left the possession of Defendants, each defendant mentioned herein knew or should have known that said defects alleged in the Complaint existed regarding the T-plate and screws at the time said products left their possession. This notice delivered to you on March 10, 2010

BARBARA YOHNKA


By: Stephen M. Masters

Exhibit "B"

Stephen Masters & Associates
Phone: (815) 726-4777

58 North Chicago Street, Suite 405
Fax: (815) 726-0273

Joliet, IL 60423
Atty No: 70817